

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
OFFICE OF THE DIRECTOR**

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Dear Mr. Campos:

Thank you for your recent correspondence regarding inclusionary zoning ordinances. The Department is pleased to address the requirements of State law and Department policy on this important topic. Your letter requests clarification on whether State housing element or other law requires the adoption of local inclusionary ordinances (or the amendment of an existing ordinance to make it more stringent). In short, neither State law nor Department policy requires the adoption of any local inclusionary ordinance (or the amendment of an existing ordinance to make it more stringent) in order to secure approval of a jurisdiction's housing element. State law does require incentives for voluntary inclusionary development (State density bonus law), pronounces housing element law neutral relative to enactment of mandatory local inclusionary provisions, and circumscribes the responsibilities of local governments which do enact inclusionary policies. The relevant sections of the Government Code are described below.

Government Code Section 65915-17, State density bonus law, requires local governments to make incentives available to residential developers that voluntarily propose to reserve specified portions of a proposed development for occupancy by low- or moderate-income households, and indicates that local governments are not to undermine implementation of this provision. Every local government is required to adopt an ordinance establishing how it will implement State density bonus law, including setting forth what incentives the local government is willing to make available.

State housing element law requires jurisdictions to plan for their existing and projected housing needs, identify adequate sites to accommodate their share of the regional housing need, analyze local policies, regulations or requirements that have the potential to constrain the development, maintenance or improvement of housing for all income level. The law also requires programs to "assist in the development of adequate housing to meet the needs of low- and moderate-income households".

While some local governments adopt mandatory inclusionary programs as one component of a comprehensive affordable housing strategy, such programs have the potential to negatively impact the overall development of housing. As a result, local governments must analyze mandatory inclusionary policies as potential governmental constraints on housing production when adopting or updating their housing elements.

For example, local governments must analyze whether inclusionary programs result in cost shifting where the cost of subsidizing the affordable units is underwritten by the purchasers of market-rate units in the form of higher prices. Such increases can be a barrier to some potential homebuyers who already struggle to qualify for a mortgage, and earn too much to qualify for government assistance. Even a modest increase in price, can be an insurmountable obstacle. Local governments must also analyze their inclusionary policies to evaluate whether sufficient regulatory and financial incentives are offered to facilitate compliance with the requirements.


In addition, it is important to note that the adoption of mandatory inclusionary zoning programs do not address the housing element requirement for local governments to provide adequate sites to accommodate the regional housing need for lower income households. Inclusionary programs are not a substitute for designating sufficient sites with appropriate zoning, densities and development standards as required by Government Code Section 65583(c)(1).

Finally, Government Code Section 65589.8 specifies that nothing in housing element law shall be construed to expand or contract the authority of a local government to adopt an ordinance, charter amendment, or policy requiring that any housing development contain a fixed percentage of affordable housing units. It further states that a local government which adopts such a requirement shall permit a developer to satisfy all or a portion of that requirement by constructing rental housing at affordable monthly rents, as determined by the local government.

California has been for many years in the midst of a severe housing crisis: there are simply not enough homes for the number of residents who need them. Continued undersupply of housing threatens the State's economic recovery, its environment, and the quality of life for all residents. The Department is now considering new data analyzing "on the ground" application of these ordinances and their effect on both affordable and market-rate housing production. Resolution demands the involvement and cooperation of all levels of government and the private sector. Both the public and private sector must reexamine existing policies, programs and develop new strategies to ensure they operate most effectively and provide an adequate housing supply for all Californians. The Department is committed to working with its public and private sector partners in this effort for the benefit of California's growing population.

I hope this responds to your inquiry. If you need additional information, please call me at (916) 445-4775 or Cathy Creswell, Deputy Director, Division of Housing Policy Development, at (916) 323-3177.

Sincerely,



Lucetta Dunn
Director

LD:l

cc: Dennis M. Rogers
David C. Smith, Esq.